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Supreme Court, U.S.
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CASE NUMBER: _____

SUPREME COURT OF THE UNITED STATES

1996 TERM

JEFFREY J. GRENELL, Petitioner

VS.

N. PETER CONFORTI; JACQUES H. GASCOYNE; DAVID E. JOHNSON, JR.; STATE OF NEW JERSEY, Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JEFFREY J. GRENELL
Petitioner, attorney pro se
P. O. Box 31
Vernon, New Jersey 07462
(201) 875-4051

35 PP

QUESTION PRESENTED FOR REVIEW

Did the Third Circuit Court of Appeals err when it failed to reverse the district court's dismissal of the plaintiff's complaint?

LIST OF ALL PARTIES

Jeffrey J. Grenell
N. Peter Conforti
Jacques H. Gascoyne
David E. Johnson, Jr.
State of New Jersey

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW . . .	i
LIST OF ALL PARTIES	ii
TABLE OF AUTHORITIES	iv
REPORTS OF OPINIONS	1
GROUNDS OF JURISDICTION OF THIS COURT	1
Date of Entry of Judgment Sought to be Reviewed	1
Statutory Jurisdiction of This Court	1
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE . . .	1
42 U.S.C. § 12132	1
STATEMENT OF THE CASE	2
BASIS OF JURISDICTION IN THE COURT OF FIRST INSTANCE	3
ARGUMENT	3
APPENDIX (TABLE OF CONTENTS) . . .	6

TABLE OF AUTHORITIES

TABLE OF CASES

Page

Federal

Rooker v. Fidelity Trust Company, 263 U.S. 413, 416 (1923) . . . 4

TABLE OF STATUTES, COURT RULES AND OTHER AUTHORITIES

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1331 3

28 U.S.C. § 1343 3

42 U.S.C. § 1201 4

42 U.S.C. § 1257 4

42 U.S.C. § 12132 1

Appellate Rule 10 4

Fed.R.Civ.Proc. 8(a)(1) 3

Fed.R.Civ.Proc. 12(b)(1) 4

REPORTS OF OPINIONS

Neither Judge Wolin's May 28, 1996 opinion (A1) nor the court of appeals judgment order (A23) was published.

GROUNDS OF JURISDICTION OF THIS COURT

Date of Entry of Judgment Sought to be Reviewed

March 17, 1997

Statutory Jurisdiction of this Court

28 U.S.C. § 1254(1)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

42 U.S.C. § 12132

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

STATEMENT OF THE CASE

In April 1994, a state licensing authority suspended petitioner's professional license on the ground that he was disabled. (A28, ¶ 7) In collateral federal disciplinary proceedings pursuant to the aforesaid state suspension, a United States district judge refused to implement the suspension, finding that it had been accomplished with no notice to the petitioner and without any evidence of disability whatever. Petitioner then sought reconsideration from the state licensing authority. There the state ethics director successfully argued that the disability suspension was justified because the director had heard from a very reliable source that petitioner had

said that he suffered from the "disability of multiple sclerosis."

BASIS OF JURISDICTION IN THE COURT OF FIRST INSTANCE

Plaintiff's complaint (A26) contained the following Statement of Jurisdiction [Fed.R.Civ.Proc. 8(a)(1)].

> This is an appeal from the judgment of the United States District Court for the District of New Jersey. The subject matter jurisdiction of the United States District Court was 28 U.S.C. § 1331 (Federal question) and § 1343 (Civil rights).

ARGUMENT

Congress has declared it unlawful for a state to use the fact of an individual's disability as a reason to discriminate against that individual. "Americans with Disabilities Act of 1990"

(ADA), PL 101-336, 104 stat. 327, 42 U.S.C. § 1201, et seq. In December 1995, petitioner sued under the ADA in the district court. The complaint was dismissed under Civil Rule 12(b)(1) (lack of subject matter jurisdiction). The Third Circuit Court of Appeals affirmed the dismissal on the ground that petitioner "seeks review of a state's highest court final judgment or decree" (42 U.S.C. § 1257) and that such review may be had only in the United States Supreme Court under Rooker v. Fidelity Trust Company, 263 U.S. 413, 416 (1923). Nothing in the record* supported the conclusion that petitioner sought any kind of review of a state's highest court ruling.

*Except for returns of service and the like, the record (Appellate Rule 10) consisted solely of the petitioner's complaint. (A26, et seq.)

In passing the "Americans with Disabilities Act," Congress has determined to eliminate the use of disabilities in the way described in the complaint. (A26, et seq.) In time the revocation of an individual's professional license on the mere ground that he is disabled will appear as antediluvian as would revoking a professional license on the grounds of race.

In light of the foregoing, it is respectfully submitted that a writ of certiorari should issue to the Court of Appeals, Third Circuit to review the judgment entered there and in the United States District Court for New Jersey.

/s/ Jeffrey J. Grenell
JEFFREY J. GRENELL
Petitioner, Attorney pro se
P. O. Box 31
Vernon, New Jersey 07462

TABLE OF CONTENTS OF APPENDIX

	Page
May 28, 1996 Opinion of the Honorable Alfred M. Wolin, U.S.D.J.	1a
June 12, 1996 Order of the Honorable Alfred M. Wolin, U.S.D.J. (filed June 13, 1996)	11a
March 10, 1997 Memorandum Opinion of the United States Court of Appeals for the Third Circuit (filed March 17, 1997)	13a
March 17, 1997 Judgment of the United States Court of Appeals for the Third Circuit	23a
Plaintiff's Amended Complaint (filed February 5, 1996)	26a

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY J. GRENELL,	:	
Plaintiff,	:	Civil Action No. 96-5368
v.	:	TRANSCRIPT OF PROCEEDINGS
N. PETER CONFORTI, JACQUES H. GASCOYNE, DAVID E. JOHNSON, JR., and: STATE OF NEW JERSEY	:	[OPINION]
Defendant	:	

Newark, New Jersey
May 28, 1996

BEFORE:
THE HON. ALFRED M. WOLIN, U.S.D.J

APPEARANCES:

JEFFREY J. GRENELL
Pro se

WILLIAM P. FLAHIVE,
Deputy Attorney General,
Attorney for Defendants

Reported by:
CHARLES P. McGUIRE, C.S.R.
Official Court Reporter

On June 12th, 1989, the District X Ethics Committee brought a complaint against Mr. Grenell for four separate incidents. One involved the purposeful misuse of judicial processes to harm or gain advantage over another person; others involved extremely rude and disruptive in-court behavior and/or disingenuous behavior for not complying with court orders. In March 1992, the New Jersey Supreme Court, adopting the recommendation of the Disciplinary Review Board, suspended Mr. Grenell from the practice of law for two years, to be followed by placement on disability inactive status. The Supreme Court's order stated that Mr. Grenell could apply for restoration of his license after examination by an approved physician. Grenell challenged this decision before

Judge Parell of this Court, who dismissed this complaint in September 1992 on grounds that the Rooker/Feldman doctrine deprived the Court of subject matter jurisdiction. The 3rd Circuit affirmed that decision.

Judge Bassler, another member of this Court, then issued an order to show cause why the same sanction should not be imposed in the New Jersey District Court, pursuant to General Rule 7B.4. Judge Bassler noted that a dissenting opinion of the Disciplinary review Board had pointed out that there was no evidence of a medical nature to support the placement on disability inactive status; rather, the special master recommended this action solely upon the "bizarre" nature of the behavior that had led to the suspension.

The court found that this violated New Jersey court rules, and that Grenell therefore could not have had notice that such a sanction was possible. Accordingly, the District Court found that the sanction violated Grenell's due process rights and declined to impose that portion of the sanction in the District Court. Judge Bassler's opinion emphasized: "this Court does not sit in review of the state court's final decision to suspend Mr. Grenell from the practice of law in New Jersey."

Upon receipt of Judge Bassler's opinion, Grenell moved before the New Jersey Supreme Court to vacate the March 11th, 1992 suspension of his license. In April 1993, the New Jersey Supreme Court denied his motion, explaining that the suspension was "properly based on a

March 1, 1990 report and recommendation of the Disciplinary Review Board . . . the May 3, 1991 Order To Show Cause, . . . and the June 18, 1991 Order of the Court with which [Mr. Grenell] failed to comply."

(Mr. Grenell enters the courtroom)

THE COURT: Defendant's involvement in these matters was as follows: Gascoyne, a retired state court judge, was the special master who conducted the state ethics proceeding of the District X Ethics Committee. He issued an oral opinion on June 21st, 1990. Johnson, as Director of the Office of Attorney Ethics, argued in favor of the suspension before the New Jersey Supreme Court. From the written submissions, it is difficult to determine as to what extent Judge Conforti, a New Jersey Superior Court judge, was i nvolved. The fourth

Defendant in this case is the State of New Jersey.

Grenell's complaint asserts that, in 1989 and again in 1990, Conforti "urged certain assistants of a certain state professional licensing authority to compel Plaintiff to submit to a mental examination." He asserts that Gascoyne "recommended to another assistant of the same licensing authority that Plaintiff's professional license be suspended until Plaintiff submitted to the aforesaid examination." Grenell complains in response to his motion to vacate the suspension in light of Judge Bassler's opinion the Defendant Johnson "argued . . . that Plaintiff's suspension was proper because Plaintiff had the disability of multiple sclerosis." He states that "as a result of the discrimination and

deprivation of rights as aforesaid, Plaintiff has suffered physical and emotional damage, damage to his reputation, and damage to his business." His claim for relief is solely monetary.

The only difference between this action and the action Grenell brought before Judge Parell is his substitution of the present Defendants for the Supreme Court of New Jersey. This makes no difference.

> The Rooker/Feldman doctrine provides that federal district courts lack subject matter jurisdiction to review final adjudications of a state's highest court or to evaluate constitutional claims that are inextricably intertwined with the state's court decision and judicial proceeding . . . A claim is inex-

> tricably intertwined if the Federal claim succeeds only to the extent that the state court wrongly decided the issues before it.

FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1986). Similar type claims have been rejected repeatedly. See Guarino v. Larsen, 11 F.3d 1151 (3d Cir. 1993); Grant v. Moles, 48 F.3d 1221 (7th Cir. 1995) (unpublished decision).

Where a plaintiff's challenge to state proceedings involves a generalized attack on a rule or procedure, the Rooker/Feldman doctrine does not apply. See Centifanti v. Nix, 865 F.2d 1422 (3d Cir. 1989). A disbarred attorney's attempt to cast his claims as a generalized challenge to Pennsylvania disbarment proceedings in Stern v. Nix,

840 F.2d 208 (3d Cir. 1988), was unsuccessful. The Court found that the complaint at bottom was focused upon the individual Plaintiff's treatment. Grenell has not argued that his challenge is a general one, and it does not appear to be. Grenell's only opposition to the motion consists of the following: "Defendants' motion must be denied. Eleventh Amendment states sovereign immunity is abrogated in ADA cases"

The Court is satisfied that Mr. Grenell lacks subject matter jurisdiction, and therefore, his complaint will be dismissed.

Thank you.

Are you Mr. Grenell?

MR. GRENELL: Yes sir.

THE COURT: We called for you before and you weren't here.

MR. GRENELL: I'm sorry.

THE COURT: That's all right.

(Matter concluded)

Pursuant to Section 753, Title 28, United States Code, the foregoing transcript is certified to be an accurate record as taken stenographically in the above entitled proceedings.

/s/ Charles P. McGuire
CHARLES P. McGUIRE, C.S.R.

DEBORAH T. PORITZ
Attorney General of New Jersey
Attorney for Defendants
The Hon. N. Peter Conforti,
The Hon. Jacques Gascoyne,
David E. Johnson, Jr.
And the State of New Jersey
R.J. Hughes Justice Complex
CH 112
Trenton, New Jersey 08625

By: William P. Flahive
Deputy Attorney General
(609) 633-8679
WF-6348

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF NEWARK

JEFFREY J. GRENELL,	)	HONORABLE ALFRED M. WOLIN
Plaintiff	)	
v.	)	Civil Action No. 95-6263 (AMW)
N. PETER CONFORTI, et al.,	)	ORDER
Defendants	)	

This matter having come before the Court on a motion of Deborah T. Poritz, Attorney General of New Jersey, by William P. Flahive, Deputy Attorney

General, appearing on behalf of defendants N. Peter Conforti, Jacques Gascoyne, David Johnson, and the State of New Jersey, and the Court having considered the papers submitted, and having entertained oral argument and issued its opinion on this matter on the record on May 28, 1996, and for good cause shown;

IT IS on this 12th day of June, 1996;

ORDERED that plaintiff's complaint is dismissed pursuant to Fed. R. Civ. P. 12(b)(1).

/s/ Alfred M. Wolin
Alfred M. Wolin, U.S.D.J.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 96-5368

JEFFREY J. GRENELL

Appellant

vs.

N. PETER CONFORTI; JACQUES H. GASCOYNE;
DAVID E. JOHNSON, JR.; STATE OF NEW JERSEY

Appeal from the United States
District Court
for the District of New Jersey
(D.C. Civ. No. 95-cv-06263)
District Judge: Honorable Alfred M. Wolin

Submitted Under Third Circuit LAR 34.1(a)
March 10, 1997
BEFORE: MANSMANN and LEWIS, Circuit Judges, and DUPLANTIER, District Judge.*

(Filed March 17, 1997)

MEMORANDUM OPINION OF THE COURT

MANSMANN, Circuit Judge.

* Honorable Adrian G. Duplantier of the United States District Court for the Eastern District of Louisiana, sitting by designation.

Jeffrey J. Grenell, an attorney acting pro se, appeals the June 1, 1996 order of the district court dismissing his complaint for lack of subject matter jurisdiction. Because we conclude that the complaint was properly dismissed, we will affirm the order of the district court.

I.

In February, 1996, Grenell filed suit against the Honorable N. Peter Conforti, Judge of the New Jersey Superior Court, The Honorable Jacques Gascoyne,[1] Judge of the New Jersey Superior Court (Retired), David E. Johnson, Jr., Director of the Office of Attorney Ethics of the Supreme Court of

1. This name is misspelled in the caption of this case; we use the corrected spelling in this opinion. By separate order, we have corrected the spelling on the court's docket.

New Jersey, and the State of New Jersey. Grenell alleges that the defendants acted to deprive him of his civil rights under 42 U.S.C. § 1983 and under 42 U.S.C. § 12132, which prohibits discrimination on the basis of disability.

This suit has its genesis in attorney disciplinary proceedings which culminated in a March, 1992 decision of the New Jersey Disciplinary Review Board, affirmed by the Supreme Court of New Jersey, to suspend Grenell from the practice of law for two years. The suspension was base on his institution of frivolous proceedings, knowingly making a false statement to a tribunal, engaging in conduct intended to disrupt a tribunal, and displaying conduct prejudicial to the administration of justice. The order of the Supreme Court

of New Jersey also directed that, at the end of the two-year suspension, Grenell be placed on disability inactive status. Prior to any application for restoration to practice, the court ordered that Grenell submit to a psychiatric examination and demonstrate his fitness to practice law.

On March 18, 1992, Grenell filed a complaint in the United States District Court for the District of New Jersey alleging that, in affirming his suspension, the Supreme Court of New Jersey violated his constitutional due process rights by not following New Jersey court rules.[2] On September 17,

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2. During the pendency of the disciplinary proceedings Grenell filed a complaint in the district court seeking to enjoin those proceedings. The complaint was dismissed. We affirmed the dismissal in Docket No. 95-5504.

1992, the district court dismissed that complaint for lack of subject matter jurisdiction. We affirmed that decision on May 17, 1993.

On December 14, 1995, Grenell filed the present action challenging, on due process grounds, his having been placed on disability inactive status.[3] Judge

---

3. Grenell bases this claim, in part, upon his contention that a United States District Court determined that he had been denied due process. Grenell apparently refers to the December 17, 1992 decision issued by the Honorable William G. Bassler. The only issue before the district court at that time was whether the court should impose upon Grenell discipline identical to that imposed by the Supreme Court of New Jersey. The court clarified that it did not

> sit in review of the state court's final decision to suspend Mr. Grenell from the practice of law inNew Jersey, instead, the issue . . . [was] limited to whether. . . [Grenell] should be suspended from . . . practice before the United States District Court for the District of New Jersey.

(continued...)

Conforti's status as a defendant in this suit apparently stems from his having filed a complaint against Grenell with the District X Ethics Committee of the New Jersey Supreme Court. The allegations set forth in this complaint resulted in Grenell's suspension and placement on inactive status. Judge Gascoyne is named as a defendant based upon his service as a special master for the District X Ethics Committee considering the allegations made against Grenell. Defendant David Johnson,

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3. (...continued)
While the court imposed a two-year suspension it declined to place Grenell on disability inactive status because it determined that there had been procedural irregularities in the state proceeding. The district court's finding does not help Grenell in this case because, as we explain, the fact that there may have been procedural irregularities is not sufficient to confer subject matter jurisdiction.

director of the Office of Attorney Ethics of the New Jersey Supreme Court, argued the case against Grenell. The state of New Jersey is also named as a defendant. The defendants filed a motion to dismiss the complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). The defendants' motion was granted following oral argument. This timely appeal followed. We have jurisdiction pursuant to 28 U.S.C. § 1291. Our review is plenary.

II.

Grenell challenges the Supreme Court of New Jersey's decision to place him on disability inactive status. The district court correctly held that it lacked subject matter jurisdiction over this claim. Under the provisions of 28 U.S.C. § 1257, federal district courts are

barred from entertaining actions which seek to reverse or modify the judgment of a state supreme court. Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923). The vitality of this rule was reaffirmed in District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983), where the Supreme Court wrote:

> United States district courts . . . have subject matter jurisdiction over general challenges to state bar rules, promulgated by state courts in nonjudicial proceedings, which do not require review of a final state-court judgment in a particular case. They do not have jurisdiction, however, over challenges to state-court decisions . . . even if those challenges allege that the state court's action was unconstitutional. Review of those decisions may be had only in [the Supreme Court].

This case does not present a general challenge to a state bar or court rule and Grenell has not attempted to frame

such a general challenge. His sole conclusory allegation on appeal is that "nothing in the record supports the trial court's conclusion that plaintiff seeks 'review' of a 'state's highest court' 'final judgment or decree.'"

This is, however, exactly what Grenell seeks when he asks that his suspension be vacated because he was denied due process as a result of his disability. Grenell's allegation that the defendants failed to follow certain rules in arriving at the disciplinary decision is not sufficient to place this case outside of the Rooker-Feldman doctrine. Given the jurisdictional constraints imposed by the terms of 28 U.S.C. § 1257, Grenell may obtain relief for the actions alleged only by filing a

petition for a writ of certiorari with the Supreme Court of the United States.

III.

Because the district court did not err in dismissing Grenell's complaint for lack of subject matter jurisdiction, we will affirm the order of the district court.

TO THE CLERK:

Please file the foregoing opinion.

/s/ Carol Los Mansmann

Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 96-5368

JEFFREY J. GRENELL

Appellant

vs.

N. PETER CONFORTI; JACQUES H. GARCOYNE;
DAVID E. JOHNSON, JR.; STATE OF NEW JERSEY

Appeal from the United States
District Court
for the District of New Jersey
(D.C. Civ. No. 95-cv-06263)
District Judge: Honorable Alfred M. Wolin

BEFORE: MANSMANN and LEWIS, Circuit Judges, and DUPLANTIER, District Judge.*

JUDGMENT

This cause came to be considered on the record from the United States

* Honorable Adrian G. Duplantier of the United States District Court for the Eastern District of Louisiana, sitting by designation.

District Court for the District of New Jersey and was submitted under Third Circuit LAR 34.1(a) on March 10, 1997.

On consideration whereof, it is not here ordered and adjudged by this court that the judgment of the district court entered on June 14, 1996, be and the same is hereby affirmed.

Costs taxed against appellant.

ATTEST:

/s/ P. Douglas Sisk

Clerk

MAR 17 1997

Certified as a true copy and issued in lieu of a formal mandate on May 8, 1997.

Teste: /s/

Chief Deputy Clerk,
U.S. Court of Appeals

ORIGINAL FILED FEBRUARY 5, 1996

JEFFREY J. GRENELL
P. O. Box 31
Vernon, New Jersey 07462
(201) 875-4051
JG 8320
Attorny pro se

JEFFREY J. GRENELL,	:	UNITED STATES DISTRICT COURT FOR THE DISTRICT
Plaintiff,	:	OF NEW JERSEY
v.	:	CIVIL ACTION NO. 2:95cv06263
N. PETER CONFORTI, JACQUES H. GASCOYNE, DAVID E. JOHNSON, JR., and STATE OF NEW JERSEY	:	Civil Action
Defendants	:	AMENDED COMPLAINT

JEFFREY J. GRENELL, residing at Drew Mountain Road, Vernon, New Jersey, whose post office address is P. O Box 31, Vernon, New Jersey 07462, by way of amended complaint, says:

STATEMENT OF JURISDICTION

This action arises under 42 U.S.C.

§ 1983 and 42 U.S.C. § 12132. Plaintiff is a citizen of the United States. Jurisdiction is founded pursuant to 28 U.S.C. § 1343 and 28 U.S.C. § 1331.

STATEMENT OF THE CASE

1. On February 1, 1989 and again on April 2, 1990, defendant CONFORTI urged certain assistants of a certain state professional licensing authority compel plaintiff to submit to a mental examination.

2. On June 21, 1990, defendant GASCOYNE recommended to another assistant of the same licensing authority that plaintiff's professional license be suspended until plaintiff submitted to the aforesaid examination.

3. On December 17, 1992, a United States district judge determined that the aforesaid licensing authority had denied

due process before suspending, on disability grounds, plaintiff's professional license effective April 1, 1994.

4. Grounded upon the foregoing determination, on April 7, 1993, plaintiff applied to the aforesaid state licensing authority to vacate the aforesaid suspension.

5. In response to the aforesaid application, defendant JOHNSON argued to the aforesaid state licensing authority that plaintiff's suspension was proper because plaintiff had the disability of multiple sclerosis.

6. At all times herein relevant each defendant was a state official acting under color of state law.

7. Effective April 1, 1994, the aforesaid state licensing authority

suspended plaintiff's license on the ground plaintiff suffered from a disability.

8. As a result of the discrimination and deprivation of rights as aforesaid, plaintiff has suffered physical and emotional damage, damage to his reputation, and damage to his business.

WHEREFORE, plaintiff demands judgment agains the individual defendants, jointly and severally, for damages, punitive and exemplary damages, interest, and costs of suit to be taxed, and against the defendant STATE OF NEW JERSEY for such relief under 29 U.S.C.

794a and 42 U.S.C. 12133 as this Court may deem appropriate and applicable.

/s/Jeffrey J. Grenell

JEFFREY J. GRENELL

Plaintiff, Attorney pro se

Dated: February 1, 1996